IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 12982 of 1994

Between:

M.Sammaiah, S/o. Ramdas.
APSRTC., Warangal.

..... PETITIONER

AND

1 The Depot Manager, APSRTC.,
Warangal II Depot, Warangal.
2 The Labour Court, Rep. Presiding Officer.
Warangal.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order, direction or a Writ particularly one in the nature of a Writ of Mandamus declaring that the order of the 2nd respondent dated 18/02/1994 in M.P.No.42/1993 is arbitrary, illegal and unsustainable.

Counsel for the Petitioner:MR.V.VISWANATHAM

Counsel for the Respondent No.1: MR.P.GANGA RAMI REDDY / P.RAJINI

Counsel for Respondent No.2:G.P. FOR LABOUR

The Court made the following :

ORDER:

This Writ Petition is filed by the workman being aggrieved by the order of the Labour Court, Warangal in M.P.No.42 of 1993, dated 18.2.1994.

The facts as referred to in the order of the second respondent-Labour Court are that the petitioner was appointed as a driver in the year 1977 with the first Respondent-Andhra Pradesh State Road Transport Corporation. From 1985 he worked as a cleaner as he was found not fit for A.1 category of conductor due to his ill-health. The petitioner was paid wages in the category of cleaner. He was examined at the A.P.S.R.T.C hospital at Tarnaka, Hyderabad for epilepsy.

It was the case of the petitioner before the Labour Court that he was subsequently declared fit on 8.1.1990 for A.I category i.e. driver post and in spite of receiving fitness certificate he was prevented from attending duty as driver. The grievance of the petitioner is that the action of the first respondent in not permitting him to discharge duties as driver and payment of less wage (wages of a cleaner) amounted to deduction of wages and as such he was entitled for wages in the

category of driver from 8.1.1990. The petitioner estimated the loss suffered by him due to payment of less wages as Rs.18,590.20 ps. from April, 1989 to May, 1993.

In the counter affidavit filed on behalf of the first respondent-A.P.S.R.T.C. it was stated that though the petitioner was initially appointed as a cleaner on 19.4.1971, he was subsequently appointed as driver on 18.3.1987 and worked as such till 30.1.1989. During the course of periodical examination, the Depot Manager, Hanmakonda directed the petitioner for examination to the A.P.S.R.T.C. Hospital at Tarnaka. The petitioner was found medically unfit for the driver's post by the Chief Medical Officer vide his letter, dated 20.9.1988 and as such he was provided an alternate job as cleaner and was posted as cleaner at Warangal-II Depot. Since the petitioner was found unfit for A.1 category he was fixed in X-2 category as cleaner. It was further stated that the petitioner submitted his willingness to work as a cleaner and it was only after obtaining his consent that he was provided with the alternate job of a cleaner protecting his pay in terms of the circular dated 28.12.1981. It is also stated that in terms of the said circular the petitioner was not entitled for wages of driver since he was medically unfit due to epilepsy and not colour blindness. It is stated that drivers, who are found unfit medically due to colour blindness only, are entitled for the benefits of the driver category under the abovesaid circular and not otherwise. It is further stated in the counter affidavit that the petitioner was advised to undergo medical check up once in six months until he retires from service and since he suffers from epilepsy, which is dangerous to work in motor garage, the petitioner was declared as medically unfit for A.1 category with effect from 23.2.1989. The allegation of the petitioner that he was paid less wages, was denied.

The Labour Court disbelieved the Xerox copy of certificate, of the Chief Medical Officer, filed by the petitioner and expressed its dissatisfaction with the explanation given by the petitioner as to the manner in which he obtained the said document. The Labour Court held that it was for the authorities concerned at Tarnaka Hospital to certify the fitness or otherwise of the petitioner to work as driver inasmuch as the hospital at Tarnaka was alone authorized to examine A.P.S.R.T.C. staff. Clarification letter issued by the Tarnaka hospital, dated 7.4.1990 was referred to by the Labour Court wherein it was clearly mentioned that the committee of doctors examined the petitioner and that the petitioner was already found permanently unfit for the post of driver in A.1 category. The Labour Court, on the basis of the said clarification letter, held that the petitioner was an epileptic patient,

which meant that he was not at fit for the post of driver and if he was provided with the job of driving and if suddenly he got fits while driving, there was every danger of his committing accidents and thereby endangering the lives of travelling public. The Labour Court held that there was no illegality committed by the first respondent in reducing the rank of the petitioner and paying the wages under X.2 category. The Labour Court held that the Judgment in **The Management of Bisra Stone Lime C. Ltd., Biramitrapur Vs. Mohendar Dip and others** was not applicable to the facts of the case on hand inasmuch as there was no termination of service and the petitioner had been accommodated as a cleaner having been found fit for X.2 category post of cleaner. In view of the fact that it was dangerous to entrust the petitioner with the duties of driving since he was an epileptic patient, the Labour Court held that the petitioner was not entitled to claim the wages of a driver and that it could not be said that he was paid less wages. The petitioner was held not entitled for the amount claimed by him and the petition was accordingly dismissed.

Reiterating the contentions raised before the Labour Court, Sri V.Vishwanatham, learned counsel for the petitioner, submits that merely because the petitioner was found unfit initially for appointment to the post of driver, it did not mean that he should be continued permanently as a cleaner more so in view of the medical certificate, which he obtained from Medinova Hospital.

It is well settled that this Court, while exercising its Writ jurisdiction under Article 226 of the Constitution of India, does not sit in appeal over orders of statutory tribunals nor does it re-appreciate the evidence on record. The Labour Court, on a proper appreciation of the evidence on record, held that since the petitioner was an epileptic patient, he could not be entrusted with the duties of a driver. The Labour Court further held that the competent authority with regard to medical examination of R.T.C. staff was the Chief Medical Officer of A.P.S.R.T.C. Hospital at Tarnaka and no reliance could be placed by the petitioner on the certificate obtained by him from Medinova Hospital. The findings of the Labour Court are well considered, arrived at on a proper appreciation of the evidence on record and do not call for interference.

The Writ Petition fails and is accordingly dismissed. No order as to costs.

RAMESH RANGANATHAN, J

22nd JUNE, 2005

Tsr.

To

1 The Depot Manager, APSRTC.,
Warangal II Depot, Warangal.
2 The Presiding Officer, Labour Court,
Warangal.

3. 2 C.D. copies.

4. 2 C.C.s to G.P. for Labour, High Court Buildings, Hyderabad (OUT)